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ZNR UUUUU ZZH  
P 271441Z FEB 07  
FM AMEMBASSY TUNIS  
TO RUCPDO/USDOC WASHDC PRIORITY  
RUEHC/SECSTATE WASHDC PRIORITY 2785  
INFO RUEHAD/AMEMBASSY ABU DHABI PRIORITY 0866  
RUEHAS/AMEMBASSY ALGIERS PRIORITY 7433  
RUEHLO/AMEMBASSY LONDON PRIORITY 1278  
RUEHNC/AMEMBASSY NOUAKCHOTT PRIORITY 0867  
RUEHFR/AMEMBASSY PARIS PRIORITY 1741  
RUEHRB/AMEMBASSY RABAT PRIORITY 8342  
RUEHTRO/AMEMBASSY TRIPOLI PRIORITY 0065  
RUEHCL/AMCONSUL CASABLANCA PRIORITY 4072

UNCLAS SECTION 01 OF 04 TUNIS 000271

SIPDIS

SENSITIVE  
SIPDIS

NEA/MAG FOR HOPKINS AND HARRIS, EB/CBA (WINSTEAD)  
STATE PASS USTR (BELL), USPTO (ADLIN)  
USDOC FOR ITA/MAC/ONE (NATE MASON), ADVOCACY CTR (JAMES),  
AND CLDP (TEJTEL)  
CASABLANCA FOR (FCS ORTIZ)

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [ECON](#) [TS](#)

SUBJECT: TUNISIA: 2007 SPECIAL 301 REVIEW: EMBASSY INPUT

REF: A. STATE 07944

- [1](#)B. TUNIS 212
- [1](#)C. 06 TUNIS 2771
- [1](#)D. 06 TUNIS 2424
- [1](#)E. 06 TUNIS 2140
- [1](#)F. 06 TUNIS 1818
- [1](#)G. 06 TUNIS 1741
- [1](#)H. 06 TUNIS 1590

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Summary  
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[1](#)1. (SBU) Post recommends that Tunisia not be included on the 2007 Special 301 Watch List. In 2006 and early 2007, Post has noted a marked change in attitude towards the protection of intellectual property rights (IPR) among GOT officials, legal experts, local artisans, and business people. IPR is now considered as a legal tool for the protection of a product and as an incentive to stimulate economic development. An inter-departmental enforcement task force has stepped up its efforts to combat piracy. There have been an increased number of raids, seizures, and closure of establishments selling illegal optical disks and tapes. The GOT ended its "correlation system" for pharmaceuticals on January 1, 2007, opening the way for US pharmaceutical companies to sell their products locally. While Post continues to press the GOT for additional improvement in Tunisia's IPR regime, the many positive steps taken to date (reftels) demonstrate that Tunisia is headed in the right direction. Post believes that placing Tunisia on the Special 301 Watch List would be counterproductive to progress being achieved. End Summary.

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Enforcement Efforts  
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[1](#)2. (U) Post's constant advocacy for better IPR enforcement, as a prerequisite for improving the local business climate, has helped to encourage the GOT to implement a strategy to combat IPR violations in the marketplace. Post has repeatedly demarched involved Tunisian authorities to implement a strengthened IPR regime. Post has also assisted

the Commercial Law Development Program (CLDP) and the US Patent and Trademark Office (USPTO) in tailoring technical assistance projects (approximately five CLDP sponsored and six USPTO sponsored in 2006) to support this objective. Post believes that GOT participation in said programs has created an improved IPR protection environment and the will for a more stringent IPR regime.

13. (U) Over the past year the GOT has undertaken legal measures and administrative actions to address the problem, including amendments to the Customs law and the law on copyrights. In June 2006, an inter-departmental commission, with representatives from the Ministry of Culture, Ministry of Commerce and Handicraft, Customs, Ministry of Interior, the Ministry of Communication Technologies, and the Organisme Tunisien de Protection des Droits d'Auteurs (OTPDA), was formed and tasked with improving IPR enforcement. OTPDA has devised an action plan to combat pirated products and working groups have been set up to survey the main problem areas related to IPR enforcement. In June 2006, the GOT also formed an interagency brigade composed of agents from different departments (police, customs, and economic control) that enforces and implements IPR laws. Music suppliers, whether national or foreign, are subjected to strict oversight and an authorization will now be required for the reproduction of music. More than four million counterfeit products were seized in 2006 during raids on various establishments. Approximately 700 raids/control operations were conducted during 2006 along with 4,300 visits to targeted industrial sectors. The majority of counterfeit products seized in Tunisia are related to health-care, body-care, automotive spare parts, electronics, and electric household equipment sectors.

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14. (U) Programs to educate consumers and manufacturers on the importance of IPR protection also occur more frequently, with improved content, including a national seminar sponsored by the local newspaper as-Sabah that invited local authorities (OTPDA, INNORPI, Customs) and private sector representatives to discuss the IPR situation and the cost to the economy of IPR violations. Public information campaigns have included radio and print media advertisements on the importance of respecting IPR. Private television has also aired programs highlighting the illegality of CD/DVD piracy to increase public awareness. With increasing public awareness of the economic and detrimental effects of counterfeit products, Tunisians who have been victims of counterfeiting are now pressuring the GOT to enact stronger laws and penalties to resolve the problem. For example, the pirating of two local movies, "Making Off" and "VHS Kahloucha," and their distribution before the scheduled opening in movie theaters provoked strong reactions from Tunisian movie makers who launched an IPR awareness campaign and who are lobbying GOT authorities for stronger anti-piracy measures.

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TRIPS Compliance - Laws and International Agreements  
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15. (SBU) The GOT states it is in compliance with the letter of the TRIPS agreement as of January 1, 2005. The GOT affords patent protection to patents registered in Tunisia. GOT ministries have also issued administrative regulations that enhance the protection of data exclusivity, submitted in the course of patent or marketing license application. Tunisia has withdrawn from the Madrid Agreement concerning International Registration, and consequently requires that trademarks be registered in Tunisia to receive full protection. Patents, designs, and industrial models are also protected when registered with the National Patent Office.

16. (U) Tunisian Copyright Law was promulgated in Law No. 36/1994. Tunisia is a member of the Berne Convention for the

Protection of Literary and Artistic Works. In addition to its national laws, Tunisia is a signatory of many international conventions related to IPR, including: WIPO treaties, WTO TRIPS, UCC and UPOV, Paris Convention Regarding Trademarks, the Nice Agreement Concerning the International Classification of Goods and Services and the Treaty on the International Registration of Audiovisual Works. Copyrights are registered with the Organisme Tunisien de Protection des Droits d'Auteurs (OTPD). Tunisia is also a member of the Hague Agreement of November 6, 1925 for the International Registration of Designs and Industrial Models. Designs and industrial models are protected through registration with the Institut National de la Normalisation et de la Propriete Industrielle (INNORPI). The Civil Court prosecutes all violations and is entitled to confiscate revenues and counterfeit copies. New legislation now permits customs officials to inspect and seize goods if copyright violation is suspected.

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Government Use/Procurement of Software  
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17. (SBU) Post has previously reported that use of unauthorized software on government (and personal) computers in Tunisia is widespread with only limited agencies using authorized copies. However, during the Microsoft Government Leaders Forum in South Africa July 11-12, the GOT and the Microsoft Corporation signed a partnership agreement (Ref D) that commits the GOT to using licensed software. As part of the agreement, Microsoft will help the GOT to upgrade and modernize its computers and networking capabilities. In turn, the GOT agreed to purchase 12,000 licenses to update government computers with official Microsoft software, rather than the pirated versions that have been commonly used. The agreement also includes the establishment of IT training centers, equipped with

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legitimate computers and software, to educate students. Microsoft will establish a Microsoft Innovation Center in Tunisia for developing local software production capacity by providing training and consulting services to software developers. Additionally, future GOT tenders for IT equipment will specify that the equipment must be Microsoft compatible, a requirement that was previously prohibited by the Tunisian open software policy.

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Optical Media  
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18. (U) While the GOT has taken significant positive steps, additional progress is needed in the optical media and pharmaceutical sectors. Post has raised the issue of optical media piracy at the highest Ministerial and working levels. In late October 2006, French retailer, Carrefour, withdrew pirated CDs and DVDs from its shelves (Ref C). In addition, Carrefour now includes a copyright declaration in its advertisements warning consumers against unauthorized reproduction of these ads. Ministry of Commerce (MOC) officials, whom EconOff contacted about this positive action, indicated that Carrefour stopped selling counterfeit products as a result of a directive from MOC. MOC officials told EconOff that on January 15, 2007, the MOC sent warning letters to major retailers (i.e. Geant and Monoprix). The letters delineated the laws being violated by each retailer and asked them to cease the sale of pirated goods. Thus far, Carrefour is the only major retailer to abandon the sale of pirated goods. Several other major retailers, such as Geant and Monoprix, have continued to stock pirated DVDs and CDs. The MOC officials told EconOff that if these retailers do not voluntarily stop selling counterfeit products, the MOC's next step will be the seizure and the destruction of the counterfeit products. The Ministry of Culture has also closed 98 establishments selling illegally recorded tapes and

CDs as part of its anti-piracy plan.

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Pharmaceuticals  
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¶9. (SBU) Following Post's engagement in 2006, the Tunisian Ministry of Health (MOH) issued an administrative circular that suspends the "Correlation System" on January 1, 2007. The "Correlation System" allowed for the selective exclusion of foreign-produced drugs from the Tunisian market place when sufficient, locally manufactured quantities (generics) existed. The termination of this "Correlation System" is a positive step. However, the fact that the termination is not retroactive, and that the GOT correlated approximately 150 additional drugs a few days before issuing its circular terminating the "Correlation System" presents a problem (septel). The MOH is unwilling to provide a copy of this list of newly correlated drugs but US pharmaceutical representatives indicate that US drugs are included.

¶10. (SBU) On February 9, Ambassador and EmbOffs met with officials of Tunisia-based US pharmaceutical companies to seek their views on the "Correlation System" termination and on the enforcement of the 2005 MOH revised administrative Circular No. 40 regarding data exclusivity and data protection. While the officials said they were happy to see the end of correlation, most of them had drugs on the list of newly correlated drugs. The companies affected, have begun to appeal the correlation of their drugs. (Note: Ambassador met with the Minister of Health on January 24. EconOff followed up with the Director General of the Pharmacy and Drug Department on February 20. Post is working closely with affected companies to achieve the withdrawal of respective drugs from the correlation list. End Note.)

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Data Protection  
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¶11. (SBU) Regarding data exclusivity and data protection, the US pharmaceutical community remains unconvinced that GOT adequately complies with these TRIPS tenets. They criticized the absence of a legal framework regarding the regulation and the management of pharmaceutical policies in Tunisia. Decisions, rules and procedures are implemented through administrative circulars and the US pharmaceutical companies would like to see these circulars enacted into law. Circular No. 40 (dated May 3, 2005) establishes the required framework for data protection concerning new pharmaceuticals and adheres to TRIPS article 39 (Note: Language used is identical to TRIPS article 39. End Note.) The circular protects data against any divulgence unless necessary for public health. Circular No. 40, article 3 grants a five year term of data protection in Tunisia. MOH officials stress that generics are not allowed until after the five year protection period has expired. The data protection period starts from the date of deposit related to the application file for marketing authorization (Autorisation de Mise sur le Marché - AMM). The marketing authorization process is administered by the Pharmacy and Drug Department (Direction de la Pharmacie et du Médicament - DPM). However, while adamantly insisting that GOT is in compliance with its WTO TRIPS obligations, the DPM Director General recently told EconOff that the DPM cannot refuse marketing authorization requests from Tunisian manufacturers of generics, if the data used to produce the generic is in the public domain. In her words, the DPM/GOT is only responsible for protecting data which is in its possession and not data that is publicly available. (Comment: Statements such as this lead Post to agree with the local US pharmaceutical community's contention that perhaps TRIPS article 39.3 is too vague and that GOT officials do not fully understand the concept of "unfair commercial use." This is an area that requires further focus

and education to achieve practical application of TRIPS  
article 39.3 and/or GOT Circular No. 40. End Comment.)

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Recommendation and Conclusion  
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¶12. (SBU) Although Tunisia was not placed on the 2006 Special 301 Watch List, the GOT took a number of positive steps to strengthen and improve the IPR regime in 2006. Therefore, placing Tunisia on the 2007 Special 301 Watch List would be counterproductive at this time. While there is still areas for improvement in Tunisia's IPR regime, the positive GOT engagement and efforts in 2006, as well as strong cooperative IPR programs with USG agencies demonstrate that Tunisia is headed in the right direction. The GOT has also met with and addressed IPR issues with private entities (i.e. Microsoft). Continued engagement via targeted USPTO and CLDP programs would be more beneficial and more apt to produce the desired results than a Special 301 listing.

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GOT Submission  
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¶13. (SBU) The Ministry of Foreign Affairs (MFA) has indicated that GOT would have a submission for the 2007 Special 301 Review process but that it could not meet the February 12th deadline. Post will forward GOT submission when received.

GODEC